

1 HON. JOHN C. COUGHENOUR
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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

10 NORTHWEST SHEET METAL WORKERS
11 WELFARE FUND, et al.,

12 Plaintiffs,

13 v.

14 ROCKY MOUNTAIN MECHANICAL, INC.,

15 Defendant.

16 No. 2:16-cv-00031-JCC

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18 **DECLARATION OF DANIEL
HUTZENBILER IN SUPPORT OF
MOTION FOR ORDER OF
DEFAULT JUDGMENT**

19 DANIEL HUTZENBILER makes the following declaration in accordance with 28
20 U.S.C. § 1746:

21 1. I am the attorney for plaintiffs and make this declaration in support of their
22 motion for default judgment herein.

23 2. Plaintiffs are various employee benefit funds. At all times material hereto, the
24 Welfare Trust has been the collection agent for contributions due to the Welfare, Pension and
25 Supplemental Pension Trusts. It has also been the collection agent for wages withheld from

DECLARATION OF DANIEL HUTZENBILER IN
SUPPORT OF MOTION FOR DEFAULT
JUDGMENT

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ROBBLEE DETWILER & BLACK
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1 employees' after tax wages to be submitted to Sheet Metal Workers, Local 103 (hereafter "Local
2 103").

3 3. Plaintiff Welfare Trust is a labor-management health and welfare trust fund
4 created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. § 186(c), and
5 authorized to sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1).

6 4. Plaintiffs Pension Trust and Supplemental Pension Trust are labor-management
7 pension trust funds created pursuant to the provisions of Section 302(c) of the Act, 29 U.S.C. §
8 186(c), and authorized to sue in its own name by Section 502(d)(1) of ERISA, 29 U.S.C. §
9 1132(d)(1).

10 5. A true and correct copy of the collective bargaining agreement in effect at all
11 relevant times between Defendant Rocky Mountain Mechanical, Inc. ("Defendant"), and Local
12 103 ("CBA") is attached hereto as Exhibit A. It is composed of two components, the Standard
13 Form of Union Agreement ("SFUA") and Addenda to SFUA ("Addenda").

14 6. At Article VIII, Section 12 of the SFUA, employers like Defendant agree "to be
15 bound by . . . the separate agreements and declarations of trusts of all . . . local or national
16 programs to which it has been agreed to that contributions will be made." Ex. A, at p. 6.

17 7. In the Addenda (at page 19 of Ex. A), employers like Defendant agree to submit
18 to the trustees remittance reports with the names, classifications and number of hours worked for
19 each employee by the 20th day of the following month. Any payment submitted after that date is
20 delinquent.

21 8. The Welfare Trust collects: (1) Pension Trust contributions (designated as NW
22 Sheet Metal Workers Pension), (2) Welfare Trust contributions (designated as Health & Welfare
23 and Industry), (3) Supplemental Pension Trust contributions (designated as Northwest
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1 Supplemental Plan and/or 401k), and (4) wages withheld on behalf of Local 103 (designated as
 2 Vacation and/or Dues). The Welfare Trust is not an agent for the Industry Fund, National
 3 Pension Fund, or International Training Institute/NEMI/SMOHI, and contributions due to those
 4 funds are not sought in this lawsuit.

5 9. True and correct copies of portions of the trust agreements for the Welfare,
 6 Pension, and Supplemental Pension are attached hereto as Exhibits B, C, and D, respectively.
 7

8 10. The Trust Agreements for the Welfare, Pension, and Supplemental Pension Trusts
 9 all provide for 20% liquidated damages if suit is filed and 12% per annum interest on delinquent
 10 contributions, as well as attorneys' fees and costs to the trusts (pp. 32-33, Exhibit B; p. 32,
 11 Exhibit C; p. 31, Exhibit D).

12 11. In summary, under the Trust Agreements, attorneys' fees and costs and interest at
 13 12% per annum are due on all delinquent contributions, liquidated damages at 20% of
 14 contributions is due on all delinquent contributions to the Welfare, Pension, and Supplemental
 15 Pension Trusts, and liquidated damages at 20% of contributions is due on all contributions to the
 16 Training Trust and on wages withheld from employees. Put another way liquidated damages and
 17 interest are due on delinquent contributions as follows:

Plaintiff	Liquidated Damages	Interest
Welfare Trust	20%	12%
Pension Trust	20%	12%
Supplemental Pension Trust	20%	12%
Apprenticeship Trust	20%	12%
Local 103	20%	12%

22 12. For the months of September through October 2015, Defendant failed to pay its
 23 contributions and wages withheld ("Contributions") on behalf of its employees. The Defendant
 24 submitted electronic remittance reports online to the Local Funds for those months. A.W. Rehn
 25

1 & Associates, the third party administrator for the Local Funds, uses the electronic remittance
 2 reports to create a spreadsheet showing outstanding contributions. A true and correct copy of the
 3 spreadsheet created by A.W. Rehn & Associates is attached as Exhibit E.

4 13. Based on the Excel spreadsheet provided by A.W. Rehn & Associates, I created
 5 Excel spread sheets for the months of September through October 2015, showing the amount
 6 owed by Defendant to each fund listed, based off of the answers provided by Defendant. A true
 7 and correct copy of those Excel spread sheets is attached hereto as Exhibit F. These sheets show
 8 the amounts due in contributions to each of the funds or in wages withheld, and the liquidated
 9 damages calculations and interest for each of those months. The sheets show that the amounts
 10 due for the months of September through October 2015, and liquidated damages and interest due
 11 on contributions, through March 24, 2016, were as follows:

Month	Contributions	Liq. Damages	Interest
Sept.-15	\$7,242.81	\$1,297.41	\$352.42
Oct.-15	\$22,734.32	\$4,365.87	\$874.49
Totals	\$29,977.13	\$5,663.28	\$1,226.91

17 14. Records kept by Robblee, Detwiler & Black show 18.6 hours have been expended
 18 by attorneys and billed at the rate of \$210.00 per hour on this matter, for a total of \$3,906.00.
 19 Costs of \$565.00 have been incurred: A true and correct copy of such records is attached hereto
 20 as Exhibit G.

21 15. Today, I went on the following website,
 22 <http://www.txnd.uscourts.gov/publications/pjrate.html>, and found that the post judgment interest
 23 rate for the last week listed was .67%.

1 DATED this 24th day of March, 2016.
2
3

4 s/ Daniel Hutzenbiler
5

6 Daniel Hutzenbiler, WSBA No. 36938
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